These are the tentative rulings for civil law and motion matters set for Thursday, November 6, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, November 5, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, <a href="https://www.placer.courts.ca.gov">www.placer.courts.ca.gov</a>.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

## 1. M-CV-0048614 Citibank South Dakota, N.A. vs. Singh, Gurcharan K.

The motion to amend judgment is granted. The judgment entered on September 4, 2014 is amended to correct the clerical error in the amount of damages. The amount of damages shall reflect the correct amount of \$13,888.80.

#### 2. M-CV-0061810 Capital One Bank USA, N.A. vs. Travis, Len

The appearances of the parties are required on the motion to set aside default.

# 3. M-CV-0062190 Evergreen Mortgage Servicing, LP vs. Doe, John

The appearances of the parties are required on the application to restrain eviction.

### 4. M-CV-0062206 Haney, Adam L. vs. Williams, Charles, et al

The motion for summary judgment is continued to November 20, 2014. It appears the proof of service related to the motion was rejected by the clerks for being in improper form on October 31, 2014.

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# 5. M-CV-0062322 U.S. Housing Partners II, LP vs. Sullivan, Tobey

The appearances of the parties are required on the hearing for application to enforce written agreement and stay execution of writ.

# 6. S-CV-0027264 JB Development, LLC vs. Brelle West Const. Mgmt., et al

#### Intervenor Liberty Surplus' Motion to Strike or Tax Costs

Intervenor Liberty Surplus' Motion to Strike or Tax Costs is granted in part and denied in part. As to items 1(c) and 1(d), cross-defendant acknowledges these are inappropriate. The motion is granted as to these costs. The remainder of the motion is denied as there has been a sufficient showing by cross-defendant to support the remainder of the costs.

# <u>Cross-Defendant Robert Boeger Plastering's Motion to Augment Costs and Attorney's Fees</u>

Cross-Defendant Robert Boeger Plastering's Motion to Augment Costs and Attorney's Fees is granted in part. The moving party is awarded reasonable attorney's fees of \$8,750 based upon 50 hours and a reasonable hourly rate of \$175. However, cross-defendant's cost memo is stricken as to Items 1(b), 1(c), 4e, 8b(5), 10, and 13 since there has been an insufficient showing on the part of cross-defendant to support these costs.

#### Cross-Defendant JB Bostick's Motion to Augment Costs and Attorney's Fees

Cross-Defendant JB Bostick's Motion to Augment Costs and Attorney's Fees is granted in part. The moving party is awarded reasonable attorney's fees of \$10,500 based upon 60 hours and a reasonable hourly rate of \$175. However, cross-defendant's cost memo is stricken as to Items 1(b), 1(c), 4e, 8b(5), 10, and 13 since there has been an insufficient showing on the part of cross-defendant to support these costs.

#### 7. S-CV-0028016 Gewalt, John vs. The Estate of Charles D. Gewalt

Defendants' Motion to Enforce Settlement is granted in its entirety pursuant to CCP§664.6. Defendants' request for judicial notice is granted. The court shall enter the proposed order after hearing and proposed judgment forthwith.

# 8. S-CV-0030195 Bellomy, John H. vs. Hunt, Terrie L.

#### Rulings on Requests for Judicial Notice

Plaintiff's request for judicial notice is granted as to Exhibit Nos. 1, 2 and 8-19. Plaintiff's request for judicial notice is denied as to Exhibits 3-7. Defendant's request for judicial notice is granted.

#### Ruling on Motion for Summary Judgment

Plaintiff's Motion for Summary Judgment, or in the Alternative, Summary Adjudication, is denied.

The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. A plaintiff moving for summary adjudication must establish the existence of facts supporting each element of the cause of action upon which summary adjudication is sought. Code Civ. Proc. § 437c(p)(1). The moving party has the burden of showing, by affidavit, facts establishing every element necessary to sustain a judgment in favor of the party. *Consumer Cause, Inc. v. Smilecare* (2001) 91 Cal.App.4th 454, 468. Once a plaintiff proves its prima facie case, the burden of proof shifts to the defendant to prove material facts. Code Civ.Proc. §437c(p)(1).

Plaintiff seeks adjudication as to his first cause of action for partition of property described as the "Penryn Property" and second cause of action for partition of property described as the "Strawberry Cabin". A cause of action for partition requires (1) a description of the property; (2) all interests the plaintiff has or claims in the property; (3) all interests of record or actually known to the plaintiff that persons other than the plaintiff have or claim in the property; (4) the estate to which partition is sought and a prayer for partition of the interests therein; and (5) if sale of the property is sought, facts justifying the sale. Code Civ. Proc. § 872.230.

Both the Penryn Property and the Strawberry Cabin were the subject of a prior action between plaintiff and defendant, dubbed the "Marvin Action", Placer County Superior Court Case No. SCV-27433. (Pltf. SSUMF 2.) In the Marvin action, plaintiff alleged the existence of an oral or implied agreement relating to the properties acquired during the parties' non-marital relationship between 1999 and 2010. Plaintiff claimed that the parties had agreed that all properties were to be owned equally between them. Defendant asserted that she was entitled to a greater ownership share of the properties because she had contributed more than her pro rata share of operating and maintenance expenses attributable to property ownership. The jury determined that an oral agreement existed between the parties by which they would share equally in any and all joint real property and the joint value of personal property acquired during their relationship. (*Id.*) The jury also determined that the real properties at issue should be divided equally between plaintiff and defendant. (*Id.*) The jury's verdict does not address whether defendant should be reimbursed for expenditures before equal division of the proceeds.

Plaintiff argues that collateral estoppel bars defendant from arguing that she is entitled to contribution from plaintiff prior to division of the property. However, collateral estoppel does not apply, as the issue presented in both cases was not identical. *Milian v. Leon* (1986) 181 Cal.App.3d 1185, cited by plaintiff, is distinguishable as in that case, the trial court found that the parties' agreement included an agreement to own

and divide the property equally irrespective of the dollar amounts contributed by each, and substantial evidence was presented that each intended the property to be owned equally irrespective of inequality in the amounts contributed by each. In this case, however, no contribution claim was made in the Marvin Action, in which defendant argued that plaintiff was not entitled to an equal ownership share of the property. Although the facts and evidence supporting defendant's claim of contribution were previously presented, the identical issue was not raised, and was not resolved. As defendant's contribution claim has not been resolved, summary adjudication cannot be granted as to the first or second causes of action.

Summary adjudication is denied as to plaintiff's third cause of action for partition of personal property, fourth cause of action for accounting, and fifth cause of action for declaratory relief relating to personal property. Defendant raises a triable issue of disputed fact as to whether a fully executed settlement agreement was performed which resolved all issues relating to ownership of personal property, notwithstanding the jury's verdict. (Deft. RSSUMF 10, 12, 13.) As to the fifth cause of action, the second amended complaint requests a legal determination "as to whether the subject property was acquired before or after the commencement of Bellomy's relationship with Hunt, as to which party is entitled to exclusive ownership and possession of some or all of the subject property, and as to which property is properly the subject of Plaintiff's personal property partition action." (SAC at 7:13-16.) Based on this request for relief, the court cannot grant summary adjudication as requested by plaintiff for "a declaration that the proceeds from the sale of the 2003 Corvette should be equally divided between Defendant and Plaintiff, and that Plaintiff should receive 70% of the tools, equipment, and other personal property acquired during the relationship...", which does not comport with the cause of action stated.

Summary adjudication is denied as to plaintiff's sixth cause of action for declaratory relief relating to the Penryn Property. The second amended complaint requests a legal determination "that Plaintiff and Hunt own the 5.0525 or so acres of land of the Penryn Property equally and as tenants in common." The court cannot grant summary adjudication as to this cause of action, as there is no clear understanding of what is meant by the phrase "or so", and what property would be encompassed within this definition.

Summary adjudication is denied as to plaintiff's seventh cause of action for slander of title, as plaintiff fails to submit evidence to establish the element of "actual malice". *See Gudger v. Manton* (1943) 21 Cal.2d 537, 544-545; *Hill v. Allan* (1968) 259 Cal.App.2d 470, 490.

Summary adjudication is denied as to plaintiff's eighth cause of action to quiet title. The second amended complaint alleges that plaintiff owns a one-half interest as a tenant in common in the Penryn Property, as described in the 1999 Grant Deed, and that defendant claims an interest adverse to plaintiff's title. Plaintiff seeks a determination that he owns a one-half interest in the Penryn Property as a tenant in common with defendant. However, there is a triable issue of material fact as to whether plaintiff and

defendant owned the entire Penryn Property as tenants in common, given that .1844 acres of land constituting the Penryn Property was expressly deeded to plaintiff and defendant as joint tenants.

Finally, summary adjudication is denied as to plaintiff's ninth cause of action for declaratory relief relating to division of property. For the reasons stated above with respect to defendant's contribution claim, summary adjudication cannot be granted as to plaintiff's ninth cause of action.

### 9. S-CV-0031530 Moore, Gregory M vs. Wells Fargo Bank, N.A. et al

# Defendant's Motion for Protective Order

The motion is granted in part. So far as defendant requests a protective order denying disclosure of deposition categories nos. 4, 5, 9, and demand for production no. 7, the request is denied. Nonetheless, the court grants the request for a protective order protecting the confidentiality of defendant's internal policies and procedures in addition to restricting the dissemination and usage of such documents within the current litigation.

# Plaintiff's Motion to Compel Deposition

In light of the court's ruling on defendant's motion, plaintiff's motion is dropped as moot.

# 10. S-CV-0033440 County of Placer vs. Westcon Construction Corporation

<u>Defendant Westcon Construction Corporation (Westcon) Motion for Summary Judgment and Summary Adjudication</u>

#### Ruling on Request for Judicial Notice

The County of Placer's (the County's) request for judicial notice is granted.

#### Ruling on Objections

The County's objections nos. 1 through 7 are overruled.

### Ruling on Motion

The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." (CCP§437c(c).) A party may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (CCP§437c(f)(1).) However, a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid*.) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences

reasonably drawn from such evidence, in the light most favorable to the opposing party. (Aguilar v. Atlantic Richfield Company (2001) 25 Cal.4th 826, 843.) A defendant meets his or her burden of showing that a cause of action has no merit upon a showing that one or more elements of the cause of action cannot be established or there is a complete defense to the cause of action. (CCP§437c(p)(2).) Once the defendant has met this burden, the burden shifts to the plaintiff to show that a triable issue of material fact exists as to the cause of action. (Ibid.) The current motion is reviewed keeping these principles in mind.

Westcon's current motion first seeks summary judgment against the County's complaint based upon its sixth affirmative defense. Specifically, Westcon alleges that the County is unable to maintain any cause of action against it since the parties negotiated a global settlement of all claims. Westcon, however, has not met its initial burden in this regard. A dispute between the parties arose over five extra work claims on the Barton Road replacement bridge project. (Westcon's SSUMF Nos. 4, 11, 12.) The parties reached a settlement to resolve these five disputed claims. (Id. at Nos. 13-18.) Westcon portrays this as a global settlement of all issues. (Id. at No. 14.) This contention, however, is directly contradicted by Westcon's own submitted material facts. The County continuously asserted the settlement applied specifically to Westcon's claims and the supporting evidence does not establish the existence of a global settlement between the parties. (Id. at Nos. 13, 15, 17.) For these reasons, Westcon has not met its initial burden and the motion for summary judgment is denied.

Westcon's second request seeks summary adjudication as to the fourth cause of action for breach of contract in the County's complaint based upon the four-year statute of limitations. The County, however, has presented a triable issue of material fact as to whether the delayed discovery rule applies in this case. While its application is often narrower, the delayed discovery rule has been applied to breach of contract actions. (see April Enterprises v. KTTV (1983) 147 Cal.App.3d 805; Lee v. Escrow Consultants (1989) 210 Cal.App.3d 915, 922; Tabachnick v. Ticor Title Insurance Co. (1994) 24 Cal.App.4th 70; Gryczman v. 4550 Pico Partners, Ltd. (2003) 107 Cal.App.4th 1, 4; Lee v. Fidelity National Title Insurance Co. (2010) 188 Cal.App.4th 583.) Delayed discovery is generally applicable where the harm from a breach is not reasonably discoverable until a future time. (Ibid.) Since a successful summary judgment and/or summary adjudication motion denies the losing party a trial, the papers of the moving party are strictly construed while those of the losing party are liberally construed. (Yanez v. Plummer (2013) 221 Cal.App.4th 180; Shively v. Dye Creek Cattle Co. (1994) 29 Cal.App.4th 1620, 1627.) The County has presented evidence showing a complex payment structure for the project. (The County's SSUMF No. 27.) The quantity of the work performed was determined by a third party who then forwarded the information to the County. (Id. at No. 23.) There were also allocated retention proceedings not included in the final payments. (Id. at No. 24.) Further, there were 11 change orders entered into for the project that also changed the total amount due. (Ibid.) When these facts and supporting evidence are considered in conjunction with the applicable standards for review, there exists a triable issue of material fact that withstands summary adjudication. For these reasons, Westcon's motion is denied.

#### Plaintiff County of Placer's Motion for Summary Adjudication

# Ruling on Request for Judicial Notice

The County's request for judicial notice is granted.

### Ruling on Objections

Westcon's objections nos. 1 through 16 are overruled.

#### Ruling on Motion

A party may move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (CCP§437c(f)(1).) However, a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid.*) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) A plaintiff meets his or her burden of showing there is no defense to a cause of action upon proving each element of the cause of action. (CCP§437c(p)(1).) Once this burden is met, the burden shifts to the defendant to show a triable issue of one or more material facts. (*Ibid.*) The current motion is reviewed keeping these principles in mind.

The County seeks summary adjudication as to the fourth cause of action for violations of the False Claims Act and sixth cause of action for breach of contract. As to the sixth cause of action, the motion for summary adjudication is denied for the reasons set forth in the court's ruling on Westcon's motion for summary judgment and/or summary adjudication.

The leaves the fourth cause of action for violations of the False Claims Act. Recovery under the Act is authorized against any person who knowingly presents a false claim for payment to a state or political subdivision. (Govt C§12651.) To be liable under the Act there must be a showing that the person had actual knowledge of the information and acted in deliberate ignorance and/or reckless disregard of the truth or falsity of the information. (Rothschild v. Tyco International (US), Inc. (2000) 83 Cal.App.4th 488, 495.) However, the County has not presented sufficient evidence to meet its initial burden. First, the County's own material facts show a billing process and structure that complicated its ability to even determine the existence of an overpayment. County's SSUMF Nos. 6-11 and supporting evidence therein.) Further, the County does not sufficiently establish that Westcon acted with deliberate ignorance and/or reckless disregard. When reviewing a motion for summary adjudication, the papers of the moving party are strictly construed while those of the losing party are liberally construed. (Yanez v. Plummer (2013) 221 Cal.App.4th 180; Shively v. Dye Creek Cattle Co. (1994) 29 Cal.App.4th 1620, 1627.) Since the County has not sufficiently established the essential elements of the fourth cause of action, the request for summary adjudication is denied.

# 11. S-CV-0034116 Global Commodities Trading Group vs. Penny Newman Grain

Plaintiff's motion to compel electronic discovery is granted. Defendant shall provided verified responses and responsive ESI to plaintiff on or before November 21, 2014. Plaintiff's request for sanctions is denied.

# 12. S-CV-0034176 Lavy, Marvell vs. Roseville Diamond K, L.P., et al

The motion to strike is dropped from the calendar as no moving papers were filed with the court. Further, the case was dismissed by the court at the September 16, 2014 OSC re Dismissal hearing.

## 13. S-CV-0034482 Wagner, Robert D. vs. Seterus, Inc., et al

### Defendant's Demurrer to the Verified Complaint

### Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted. However, the court notes that "taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning." (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.)

## Ruling on Demurrer

The demurrer is overruled. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.) A review of the verified complaint, when read as a whole, demonstrates that there are sufficient allegations to support the alleged causes of action.

Any answer or general denial shall be filed and served on or before November 14, 2014.

#### Defendant's Motion to Strike

Defendant's motion is granted in its entirety. The references to attorney's fees in paragraph 53 and paragraph 6 of the prayer for relief are stricken. The references to punitive damages in paragraph 8 of the prayer for relief are also stricken.

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# 14. S-CV-0034862 Crosby, Darwin vs. Save Mart Supermarkets, Inc.

The demurrer is continued, on the court's own motion, to December 4, 2014 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

# 15. S-CV-0035130 Mahendran, Chandrasekaran, et al - In Re the Petition of

The appearances of the parties are required on the minor's compromise petition. The appearance of the minor at the hearing is waived.

#### 16. S-CV-0035168 Khera, Gurpreet S. vs. Kumar, Ashok

Petitioner's Motion for Attorney's Fees is granted pursuant to Civil Code \$527.6(r). Petitioner is awarded \$7,125.00 in attorney's fees.

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